

JOHN W. HUBER (#7226)
United States Attorney
JOHN MANGUM (#2072)
Assistant United States Attorney

VIRGINIA CRONAN LOWE (admitted Pro Hac Vice)
Trial Attorney, Tax Division
U.S. Department of Justice
P.O. Box 683, Ben Franklin Station
Washington, D.C. 20044
Telephone: (202) 307-6484
Facsimile: (202) 307-0054

Attorneys for the United States

IN THE UNITED STATES DISTRICT COURT FOR THE
DISTRICT OF UTAH

NELDON JOHNSON and)	
GLENDY JOHNSON,)	Case No. 2:15-cv-00742-JP
)	
Plaintiffs,)	UNITED STATES' MOTION TO
)	CONSOLIDATE CASES
v.)	
)	
UNITED STATES OF AMERICA,)	
)	
Defendants.)	
)	

The United States, by and through its undersigned counsel, moves to consolidate the cases, *Neldon and Glenda Johnson v. United States*, Civil No. 2:16-cv-00080-RJS and *Neldon and Glenda Johnson v. United States*, Civil No. 2:16-cv-00081-CW, with the instant action. The United States submits the following in support of this motion.

STATEMENT OF THE CASE

In the instant action the plaintiffs filed a petition to quash a summons that was issued to Wells Fargo Bank as part of an IRS examination into Plaintiffs' federal income tax liabilities for the year 2012. The United States filed a motion requesting summary denial of the petition to

quash the summon and a counter-petition for enforcement of the summons. In *Neldon and Glenda Johnson v. United States*, Civil No. 2:16-cv-00080-RJS, the plaintiffs filed a petition to quash a summons that was issued to Bank of American Fork as part of the examination of the plaintiffs' federal income tax liabilities. In *Neldon and Glenda Johnson v. United States*, Civil No. 2:16-cv-00081-CW, the plaintiffs filed a petition to quash a summons that was issued to Millard County Credit Union as part of the examination of the plaintiffs' federal income tax liabilities. The United States' responses to these petitions to quash will be filed by April 1, 2016.

ARGUMENT

Federal Rule of Civil Procedure 42(a) and DU Civ. R. 42-1 permit the consolidation of two or more cases which involve common questions of fact or law. The Tenth Circuit has set forth a general principal that a Court's determination regarding consolidation is discretionary. See *Shump v. Balka*, 574 F.2d 1341, 1344 (10th Cir. 1978). As one commentator has noted, "it is for the court to weigh the saving of time and effort that consolidation would produce against any inconvenience, delay, or expense that it would cause." 9 Charles Alan Wright & Arthur R. Miller, Federal Practice and Procedure § 2383, at 439 (2d ed. 1995).

All three of these cases involve the same parties, and common issues of fact and law. At issue in all three cases is the enforcement of an IRS administrative summons issued to a financial institution requesting copies of signature cards, monthly bank statements, bank deposits slips, deposit items, credit memos, cancelled checks, and debit memos drawn on accounts which Neldon Johnson or Glenda Johnson either owns or is a signer. At issue in each case is whether the summons should be enforced pursuant to the factors set forth in *United States v. Powell*, 379 U.S. 48 (1964).

As set forth above, these cases involve common issues of fact and law and therefore consolidation would have the effect of a substantial savings of judicial effort. Moreover, the plaintiffs and the defendant are each represented by the same respective counsel in each case. No party will be prejudiced or disadvantaged if these cases are consolidated.

CONCLUSION

For the foregoing reasons, the United States respectfully requests that cases, *Neldon and Glenda Johnson v. United States*, Civil No. 2:16-cv-00080-RJS and *Neldon and Glenda Johnson v. United States*, Civil No. 2:16-cv-00081-CW be consolidated with the instant action.

Respectfully submitted this 22nd day of March, 2016.

JOHN W. HUBER
United States Attorney

JOHN K. MANGUM
Assistant United States Attorney

/s/ Virginia Cronan Lowe
VIRGINIA CRONAN LOWE
Trial Attorney, Tax Division
U.S. Department of Justice
P.O. Box 683
Ben Franklin Station
Washington, D.C. 20044-0683
Telephone: (202) 307-6484

Attorneys for the United States

CERTIFICATE OF SERVICE

IT IS HEREBY CERTIFIED that service of the foregoing UNITED STATES' MOTION TO CONSOLIDATE CASES has been made this 22nd day of March, 2016, via the Court's CM/ECF system to:

Paul W. Jones, Esq.
Attorney for Plaintiffs

/s/ Virginia Cronan Lowe
VIRGINIA CRONAN LOWE
Trial Attorney, Tax Division
United States Department of Justice